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In the

SUPREME COURT OF THE UNITED STATES

ALFRED CAMPBELL, III

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE

Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals for
the Sixth Circuit

PETITION FOR REHEARING

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1. Because the penalty mandate by Congress that "no person shall be subject to" includes criminal penalties, and because the United States, acting through its agencies, within the territorial jurisdiction of the State, Tennessee, most certainly is eventually going to run into Article III, Section 2, Clause 2 and 3, in the pursuit of such forbidden penalties, this Court should exercise its appellate jurisdiction under Article III, Section 2, Clause 2, and fix the division amongst the Circuits regarding the meaning of when the protection pursuant to 44 U.S.C. § 3512(a) does or does not apply. 3

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INTRODUCTION

Because the penalty mandate by Congress that "no person shall be subject to" includes criminal penalties, and because the United States, acting through its agencies, within the territorial jurisdiction of the State, Tennessee, most certainly is eventually going to run into Article III, Section 2, Clause 2 and 3, in the pursuit of such forbidden penalties, this Court should exercise its appellate jurisdiction under Article III, Section 2, Clause 2, and fix the division amongst the Circuits regarding the meaning of when the protection pursuant to 44 U.S.C. § 3512(a) does and does not apply.

Petitioner suggests this Court reconsider the holding in *Dole v. United Steelworkers*, 494 U.S. 26,33 (1990) that typical information collection requests are tax forms such as the 1040 and reaffirm this holding applies to the Paperwork Reduction Act of 1995 as it did the Act of 1980. Since holding tax forms are subject to the public

protection, 44 U.S.C. § 3512(1980), a division of the U.S. Circuit Courts and Tax Court has appeared, both directly after the Dole decision, and now this division has grown to such proportions that the Department of Justice is promoting the divided authority as a green light to continue disregarding Congress and its mandate that all territorial activity by the United States outside its sovereignty and within the sovereignty of any State, must comport with the Constitution of the United States.

Allowing the United States to think it invincible in respect to the rights of all Americans among the Several States is a dangerous message to send and allowing the division to go unfettered among Congress' Circuit Courts and its Tax Court caused by this Court's Dole decision and the Paperwork Reduction Act of 1995, only will continue cause Citizens to lose respect for decisions by this Court which can only lead to civil chaos.

ARGUMENT IN FAVOR OF PETITION

1. Because the penalty mandate by Congress that "no person shall be subject to" includes criminal penalties, and because the United States, acting through its agencies, within the territorial jurisdiction of the State, Tennessee, most certainly is eventually going to run into Article III, Section 2, Clause 2 and 3, in the pursuit of such forbidden penalties, this Court should exercise its appellate jurisdiction under Article III, Section 2, Clause 2, and fix the division amongst the Circuits regarding the meaning of when the protection pursuant to 44 U.S.C. § 3512(a) doesn't apply.

On November 14, 2007, the 7th Circuit Court of Appeals issued its decision in U.S. v. Denny R. Patridge, case number 06-3635. In its consolidated decision, the 7th Circuit stated it was reaffirming its decision in *Salberg v. U.S.*, 969 F.2d 379, 384 (1991), which held the "obligation to file a tax return stems from 26 U.S.C. § 7203, not from any agency's demand. The Paperwork Reduction Act does not repeal § 7203."

The 9th Circuit in U.S. v. Priest, et al., 06-10438, decided July 5, 2007, likewise concluded that the 1995 PRA "does not limit the impact of Hicks (947 F. 2d 1356, 1359-60) because we there held that 'repeals by implication are not favored.'"

The 7th and 9th Circuit's decision are contrary to this Court's holding in *CIR v. Lane Wells Co.* 321, U.S. 219, 223 (1944) that "Congress has given discretion to the Commissioner to prescribe by regulations forms of returns and made it the duty of the taxpayer to comply."

The 7th and 9th Circuit opinions also are contrary to this Court's decision in *Dole v. United Steelworkers*, 494 U.S. 26, 33 (1990) which held "typical information collection requests include tax forms" and that the public is to be protected.

The 7th and 9th Circuit's opinion is also contrary to this Court's decision in *U.S. v. Hubbell*, 530 U.S. 27, 35 (2000) which held "incriminating evidence may be the by-product of obedience to a regulatory requirement."

The decision by the 7th and 9th Circuits completely rejected the direct words of the Paperwork Reduction Act of 1980 and 1995 which both begin at section 3512 "Not withstanding any other provision of law no person shall be subject to any penalty..." The 7th Circuit admits the term "return" is not defined by any Act of Congress and ignores the logical follow that is the request derives from regulations.

The 7th Circuit takes the leap by saying they have "no doubt that the IRS has complied with the Paperwork Reduction Act." "The control number on Form 1040 appears on OMB's web site as a current, valid number; if this is wrong, it takes more than a lawyer's say-so to establish the proposition."

The 7th Circuit's position is contrary to the direct language of the Paperwork Reduction Act of 1995 as well as this Court's decision in Dole. The 1995 Act directs a "complete defense, bar, or otherwise" may be raised at any time. The

protection would begin upon either a person's "say-so" or upon an Attorney claiming the protection for his client. Look at how the 7th Circuit handled the issue.

The mandates by Congress at 44 U.S.C. § 3506(c)(1)(B)(1995), which among other things, directs the Agency to inform the target the reason why the questions are being asked and how the information is to be used, is an exercise by Congress in regulating the relationship between the United States when it is asking for information within the territorial jurisdiction of any State from Citizens domiciled therein.

See also 5 U.S.C. §552(a) where Congress requires the same list of disclosure for the IRS as section 3506(c)(1)(B) of Title 44.

This Court said in Dole:

> "While the grammar of this text can be faulted, its meaning is clear: **the public is protected under the Paperwork Reduction Act** from paperwork regulations not issued in

compliance with the Act, only when those regulations dictate that a person maintain information for an agency or provide information to an agency. **By its very terms, the statute's enforcement mechanism** does not apply to rules which require disclosure to a third party rather than to a federal agency." Id. at 40

Furthermore, the Patridge panel said "How any of this could block a conviction for tax evasion is a mystery."

The 10th Circuit has steadfastly remained[1] a strong proponent of the Dole holding with their most recent deposit on the reach of protection for the public in *USA v. Chisum*, 502 F.3d 1237 (10th Cir.2007)

Chisum held:

C. The Paperwork Reduction Act (PRA)

The PRA, 44 U.S.C. § 3501-20,

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[1]Petitioner understands thus far the Tenth Circuit has actually given no relief under the 1980 or 1995 Act while they continue to direct where and when such relief is to be given.

> precludes the imposition of any penalty against a person for "failing to comply with a collection of information" if either (1) it "does not display a valid control number" or (2) the agency fails to alert the person that he or she "is not required to respond to the collection of information unless it displays a valid control number." 44 U.S.C. § 3512(a). A § 3512(a) defense may be raised at any time. See id. § 3512(b). Tax forms are covered by the PRA. See Dole v. United Steelworkers of Am., 494 U.S. 26, 33 (1990).... But the PRA protects a person only "for failing to file information. It does not protect one who files information which is false." Collins, 920 F.2d at 630 n.13 (internal quotation marks omitted). The charges against Mr. Chisum were predicated on the filing of false information, not the failure to file. He is therefore not entitled to relief.

Article III, Section 2, Clause 2, directs this Court is with "appellate jurisdiction" over the issues herein as well as the issues herein will soon appear under Article III, Section 2, Clause 3, in

the trial of crimes alleged committed within any State involving such information being collected.

In *U.S. v. Collins*, 920 F.2d 619 (10th Cir. 1990) the 10th Circuit, prior to the 7th Circuit's decision in Salberg, stated

> [fn12]In *U.S. v. Tedder*, 787 F.2d 540, 542 (10th Cir. 1986), this court held that tax forms were not information collection requests subject to the Paperwork Reduction Act because the filing of income tax returns was obligatory. **This holding[2] is superseded by the Supreme Court's analysis in Dole v. United Steelworkers,** ___ U.S. ___, 110 S.Ct. 929, 933, 108 L.Ed.2d 23 (1990), which included federal income tax forms within the category of information collection requests under the Act. Dole would also appear to call into question the holdings in Snyder v. IRS, 596 F. Supp. 240 (N.D.Ind. 1984) and Cameron v. IRS, 593 F. Supp. 1540 (N.D.Ind. 1984), aff'd 773 F.2d 126 (7th Cir. 1985), both of which held the Paperwork

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[2]No doubt Dole is a "Holding."

Reduction Act inapplicable to IRS forms. However, Dole does not contravene our recent holding in Lonsdale v. U.S., 919 F.2d 1440, 1444 (10th Cir. 1990) that IRS summonses do not constitute information requests under the Act because they are issued in the course of an investigation directed against a specific individual or entity. See 44 U.S.C. § 3518(c)(1)(B)(ii).

[fn13] In U.S. v. Weiss, 914 F.2d 1514, 1520-22 (2d Cir. 1990), the Second Circuit held that the Paperwork Reduction Act did not preclude prosecution for filing false medicare and Medicaid claims, despite the fact that the forms in question did not contain OMB control numbers. Distinguishing Smith, where defendants were prosecuted for failure to file a Plan of Operations with the Forest Service, the Second Circuit reasoned that the Act "`only protects a person from penalties for failing to files information It does not protect one who files information which is false.'" Id. at 1522 (quoting Funk, The Paperwork Reduction Act: Paperwork Reduction Meets Administrative Law,

> 24 Harv.J. on Legis. 1, 77 n. 411 (1987)) (emphasis in original). We recognize that because defendant was charged with tax evasion and not failure to file tax returns, he technically was not being prosecuted for failure to provide information. Had defendant's tax evasion been effectuated through the filing of falsified tax returns, Weiss would dictate that no Paperwork Reduction Defense would be available to him. **But because the provision of information in 1040 forms is inexorably linked to the statutory requirement to pay taxes, and defendant failed to file such forms, the Paperwork Reduction Act was applicable to such conduct.** Emphasis added.

Petitioner claims the Chisum Panel[3] is partly incorrect. The Chisum Panel nine months earlier held in *Pond v. CIR*, T.C. Memo 2005-255 WL 18928, decided January 4, 2007, Tax Court was wrong for directing Pond, by raising a defense against penalty and interest claims, of the

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[3]Same 10th Circuit but different Judges.

Secretary, he was acting in a frivolous manner.

The 7th Circuit in Patridge says it cannot understand how "tax evasion" and the public protection provision of the Paperwork Reduction Act are connected, describing this as a "mystery" while the 10th Circuit says Forms like the 1040 are "inexorably linked to the statutory requirement to pay taxes..." Collins, fn13, Chisum, pg. 12

The 1980 Act at issue in Collins and Dole protected the public from penalties for failing to maintain or provide information while the 1995 Act protects the public from failing to comply with a collection of information. The 1995 Act also says the OMB number must be issued in "accordance with this chapter" and defense, bar or otherwise, can be raised at any time.

Simply, the decisions show why this Court needs to address the reach of the public protection provided by Congress to each of the several States at 44 U.S.C. § 3512(a)(1995).

Then there is the Tax Court's refusal to

accept the 10th Circuit's decision in Pond v. CIR. See *Wolcott v. CIR*, T.C. Memo. 2007-315. (fn.8)

The relationship between the United States Agencies and the Citizens within the territorial jurisdiction of the several States involving gathering information and usage of same is in need of specific uniform enforcement, and to which blatant error of Constitutional proportion exists in the refusal of the U.S. Department of Justice, Commissioner of I.R.S., U.S. Tax Court and the several U.S. Court of Appeals, in rejecting both the law, history and decisions governing the Paperwork Work Reduction Act of both 1980,1995, and the reasons both acts arose in the first place. With many violations comes many cases which can be prevented by granting this Petition for rehearing.

2. Rehearing by this Court should be granted because until this Court fixes the division of the Circuits and Tax Court caused by this Court's Dole decision and the Paperwork Reduction Act of 1995, the public will continue to lose respect for decisions by this

Court which can only lead to civil chaos.

The 7th Circuit says the requirement of Citizens within the territorial jurisdiction of any one of the Several States to answer questions on Form 1040 comes from 26 U.S.C. § 7203 in both Patridge and Salberg. Section 7203 is a criminal provision. This makes the 7th Circuit's theory that the IRS, by asking Citizens within the territorial jurisdiction of any one of the Several States to answer their questions on the 1040, not only is the IRS conducting an investigation with the 1040, but a criminal investigation at that.

In *Pennsylvania v. Muniz*, 496 U.S. 582, 596 (1990) this Court explored short of the "outer boundaries of what is 'testimonial'" and that the protection primarily was to prevent "a recurrence of the Inquisition and the Star Chamber, even if not in their stark brutality..." *Ullmann v. U.S.*, 350 U.S. 422, 428 (1956) This Court went on to say "it is evident that a suspect is 'compelled . . . to be a witness against himself' at least whenever he

must face the modern-day analog of the historic trilemma[4] - either during a criminal trial where a sworn witness faces the identical three choices, or during custodial interrogation where, as we explained in Miranda, the choices are analogous and hence raise similar concerns." Id.

In *Colorado v. Spring*, 479 U.S. 564 (1987) this Court compared the "right to refuse to answer any question which might incriminate," citing *U.S. v. Washington*, 431 U.S. 181, 188 (1977) and directed it was "self-evident that one who is told he is free to refuse to answer questions is in a curious posture to later complain that his answers were compelled." Ibid.

There, it was said a "valid waiver does not require that an individual be informed of all

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[4]cruel trilemma means self-accusation, perjury or contempt, defining the operation of the Star Chamber, wherein suspects were forced to choose between revealing incriminating private thoughts and forsaking their oath by committing perjury.

information 'useful' in making his decision or all information that 'might . . . affec[t] his decision to confess.' *Moran v. Burbine*, 475 U.S., at 422. This Court has "never read the Constitution to require that the police supply a suspect with a flow of information to help him calibrate his self-interest in deciding whether to speak or stand by his rights." Colorado at 577 In regard to an Agency request for information, Congress has made this requirement through the Paperwork Reduction Act of both 1980 and 1995 very clear.

If a Federal Agency refuses to tell a person why they are asking questions of any Citizen or group of Citizens domiciled within one of the Several States and how that agency intends to use those answers, the only choice remaining for members therein is the act of remaining silent without threat or being "subject" to any penalty.

In *U.S. v. Dawes*, 951 F.2d 1189 (fn.2)(10th Cir. 1991), the 10th Circuit reported on the troubling aspect of not enforcing the Paperwork

Reduction Act in a unified manner, the Court stated:

> "In response to a question from the court during oral argument, counsel for the government indicated that the government did not have a unified federal position regarding this issue. Given the fact that the issue is one of national scope which affects the tax revenues of the U.S., we find this posture regrettable."

The same problem exists today as depending on which one of the Several States a State Citizen lives in determines whether he or she can be penalized for remaining silent or not.

In *Garner v. U.S.*, 424 U.S. 648 (1976) this Court started with "the fundamental proposition:

> A witness protected by the privilege may rightfully refuse to answer unless and until he is protected at least against the use of his compelled answers and evidence derived therefrom in any subsequent criminal case in which he is a defendant." quoting *Kastigar v. U.S.*, 406 U.S. 441

(1972).
Id. at 656

The Court has held that an individual under compulsion to make disclosures as a witness who revealed information instead of claiming the privilege lost the benefit of the privilege. *U.S. v. Kordel*, 397 U.S. 1, 7-10 (1970).

Given the evidence the U.S. Agencies are refusing to recognize or direct compliance with the 1995 Paperwork Reduction Act, continuing to emphasize the Paperwork Reduction Act of 1980 instead, and that a deep divide exists between the 7th Circuit in Patridge and Salberg with the 10th Circuit in Collins, Dawes, Pond and Chisum, as well as the Tax Court's public display of defiance to the 10th Circuits Pond decision it reported in Wolcott, as well as such blatant defiance by the 7th Circuit and Tax Court for this Court's decision in Dole and Congressional mandates within the Paperwork Reduction Act of 1995, should compel this Court to rehear the matters in this case.

CONCLUSION

For the foregoing reasons Petitioner suggests this Court Grant this Petition for Rehearing and exercise its appellate jurisdiction to make final matters involving the Paperwork Reduction Act of 1995 between Citizens within the territorial jurisdiction of any State, in this case Tennessee, and any Agency who has both a civil and criminal purpose for seeking information from such Citizens therein.

Respectfully Submitted

4.10.08 /s/ Alfred Campbell, III

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Petition for Rehearing is presented in good faith and not for the purpose of any delay, whatsoever, and is limited to substantial and controlling issues involving recent decisions by the 7th, 9th and 10th Circuit, which divide the United States Agencies with Citizens within the territorial jurisdiction of any State, in this case Tennessee, on the application and reach of the Paperwork Reduction Act of 1995 and the fifth amendment tones remaining silent may trigger, only strengthening why this Court should Grand this Petition for Rehearing.

/s/Alfred Campbell, III